



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 25, 1994

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County Courthouse  
P.O. Box 1748  
Austin, Texas 78767

OR94-397

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24874.

The Travis County District Attorney's Office (the "district attorney") received an open records request for the following information:

the entire district attorney's felony file on criminal case number 93-2518 that was brought against Defendant Frank N. Waldrop. My request is intended to include, but not be limited to, all statements made by the complainant, all statements obtained from defendant Frank Waldrop, all other oral or written statements obtained from any person possessing knowledge of facts relevant to the criminal case, all handwritten notes or written reports prepared by the staff of the district attorney's office or private investigator, all incident or offense reports, and all surveillance tapes or videos.

You have submitted the requested documents to this office for review<sup>1</sup> and contend that portions of the records come under the protection of sections 552.101 and 552.107 of the Government Code.

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<sup>1</sup>You inform us, however, that there are no surveillance or video tapes in this particular file.

You first contend that "Exhibit A," a pre-sentence investigation report for the criminal defendant, must be withheld from the public pursuant to section 552.101 of the Government Code. We agree. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 9(j) of article 42.12 of the Code of Criminal Procedure governs the release of pre-sentence investigation reports and related documents to the public and provides in pertinent part:

The judge by order may direct that any information and records that are not privileged and that are relevant to the report required by Subsection (a) of this section be released to the officer conducting the presentence investigation . . . . The report and all information obtained in connection with the pre-sentence investigation are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the court for the effective supervision of the defendant. . . .

The circumstances listed in subsections (d) through (g) of section 9 do not appear to be applicable here. Further, you represent to this office that the court that heard the criminal charges against Frank Waldrop has not directed the release of this report to the requestor. Accordingly, the district attorney must withhold Exhibit A.

You next contend that the portions of Exhibits B and D that you have marked come under the protection of common-law privacy as incorporated into section 552.101 of the Government Code. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Exhibits B and D consist of various police and district attorney records, including a victim's statement, pertaining to an investigation of sexual assault of minor -- the crime for which Frank Waldrop was arrested. In Open Records Decision Nos. 393 (1983) and 339 (1982) this office concluded that common-law privacy requires the withholding of the name of every victim of a serious sexual offense, any other information tending to identify the victim, and the detailed description of the offense. Ordinarily, the information you have marked would be withheld from the public pursuant to section 552.101. We have, however, reviewed a copy of the Travis County district court file in this case, which shows that the defendant pled guilty to the offense of attempted sexual assault involving a child younger than 17 years of age who is not the defendant's spouse. See Penal Code §§ 15.01 (criminal attempt), 22.011(a)(2)(A),(c)(1) (sexual assault). The court documents state the name and age of the child, and some documents indicate that the offense was sexual assault of a child younger than 17 years of age. There is also an

affidavit for warrant of arrest and detention that gives a detailed account of the offense. To the extent that the district attorney's files contain information maintained by the district clerk, the crime victim no longer has a privacy interest in that information. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). We have reviewed the information in Exhibits B and D and have marked the documents that the district attorney must withhold to protect the legitimate privacy interests of the victim; the remaining information in Exhibits B and D that you have marked as coming under the protection of common-law privacy must be released to the requestor.

You next contend that the contents of Exhibit C are made confidential under section 611.110 of the Health and Safety Code and thus must be withheld pursuant to section 552.101 of the Government Code. We need not reach this issue at this time, however, because it appears to this office that this record is totally unrelated to, and thus falls outside the ambit of, the subject matter of the open records request. Accordingly, the district attorney need not release this document.

Finally, you contend that certain marked portions of the records contained in Exhibit D come under the protection of section 552.107(a) of the Government Code because they constitute

communications between an Assistant District Attorney and her associates regarding the handling and disposition of this case. These communications constitute legal advice and opinions rendered by the attorney to associates in furtherance of the rendition of Legal Services to the client in this case.

Section 552.107(1) of the Government Code protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." See Open Records Decision No. 574 (1990) (copy enclosed). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* In this instance you argue only that certain information constituting legal advice and opinion may be withheld pursuant to section 552.107(1). After reviewing the records in Exhibit D, we generally agree that the information you have marked consists of protected legal advice or opinion. However, some of the information you have marked is purely factual information that may not be withheld as legal advice or opinion.

We have marked the information in Exhibit D that the district attorney may withhold pursuant to either section 552.101 or 552.107(1); the remaining information in Exhibit D must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison  
Assistant Attorney General  
Open Government Section

SLG/RWP/rho

Ref.: ID# 24874

Enclosures: Open Records Decision No. 574  
Marked documents

cc: Mr. John T. Banks  
Law Offices of Hurst & Wade  
100 Congress Avenue, Suite 1800  
Austin, Texas 78701  
(w/o enclosures)